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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

WILLIAM A. HILL, ET AL.	:	
	:	
vs.	:	
	:	
DELAWARE NORTH COMPANIES	:	
SPORTSERVICE, INC.	:	1:11 CV 753

Telephone conference in the above-captioned matter held  
Tuesday, April 10, 2013, commencing at 11:04 a.m., before  
the Honorable Jeremiah McCarthy, in the United States  
Courthouse, 2 Niagara Square, Buffalo, New York, 14202.

APPEARANCES:

GARY F. LYNCH, ESQ., 36 North Jefferson Street,  
New Castle, PA, appeared for plaintiff.

ROBERT W. PRITCHARD, ESQ., 625 Liberty Ave.,  
Pittsburgh, PA, appeared for Delaware North.

MARIE C. BRUCE, ESQ., and JAMIE B. EISENBERG,  
ESQ., 7979 Old Georgetown Rd., Bethesda, MD,  
appeared for Baltimore Orioles.

1           THE CLERK: We're on the record in Hill versus  
2 Delaware North Companies, Inc., Case No. 11-CV-753. For  
3 plaintiffs, Gary F. Lynch; for defendant, Robert William  
4 Pritchard; for the intervenor Baltimore Orioles, Jamie  
5 Eisenberg and Marie Celeste Bruce.

6           We are here for a telephonic status conference before the  
7 Honorable Jeremiah J. McCarthy.

8           THE COURT: Good morning, counsel.

9           MR. LYNCH: Morning, Your Honor.

10          MS. BRUCE: Morning, Your Honor.

11          THE COURT: Can everybody hear me?

12          MS. EISENBERG: Yes, sir.

13          THE COURT: Okay. Let's see. First of all, I did  
14 receive an e-mail from Mr. Pritchard, I believe, indicating  
15 that the -- or my -- Mr. Yusick of my chambers received it --  
16 indicating that the parties, including the Orioles, had agreed  
17 on the language of a stipulated amended protective order. And  
18 he sent that to us. That was his e-mail of April 2nd. So I  
19 just want everybody to confirm that that is correct. If so,  
20 I'll sign that.

21          MR. LYNCH: Yes, Your Honor. This is Gary Lynch for  
22 the plaintiff. That's fine with us.

23          THE COURT: Okay. And let's see. Ms. Eisenberg and  
24 Ms. Bruce, is that -- even though you're not signators to it,  
25 have you reviewed it?

1 MS. EISENBERG: Yes, sir, we reviewed it. All of the  
2 parties, the nonparties reviewed it, including Miss Hahn. She  
3 e-mailed me back and said if the Orioles were fine with the  
4 language, then so was MSA. So we all are on the same page,  
5 Your Honor.

6 THE COURT: All right. So I'll sign that and we'll  
7 docket that.

8 Now, then Mr. Lynch had sent me a letter dated April 2nd,  
9 copying everyone, I believe, and listing portions of the  
10 contracts that he wanted to review. And I think we originally  
11 had this conference scheduled for last week, and then at  
12 Miss Bruce's request we put it off so that she would have an  
13 opportunity to further consider that letter.

14 Where do we stand on that request?

15 MR. PRITCHARD: Your Honor, this is Rob Pritchard  
16 speaking for defendant. We have had a chance to review the  
17 additional requests, and also I've consulted with Miss Bruce  
18 that, again, just speaking for defendant, we said that we've  
19 objected to plaintiffs' request, and conveyed that objection  
20 to Mr. Lynch. We believe that the additional provisions of  
21 the agreement that have been requested are not relevant to the  
22 disputes at issue in this case. And being mindful of the --  
23 in terms of the Orioles with respect to limiting the  
24 production to only things that are relevant, and their prior  
25 stated concerns about confidentiality, and have stated our

1 objections to the additional production. And I'd be happy to  
2 chat in some detail, if you'd like, about why we think the  
3 additional provisions are not relevant.

4 THE COURT: Did you send him a letter or how did you  
5 communicate? Because I haven't seen anything.

6 MR. PRITCHARD: I spoke with Mr. Lynch by telephone  
7 last week and then followed up yesterday by e-mail with a  
8 detailed explanation as to each section, and then our position  
9 on each. But we had a chance to chat last week about it.

10 THE COURT: Okay. Because -- now I wasn't copied on  
11 that, was I? I don't recall having seen anything.

12 MR. PRITCHARD: That's correct.

13 THE COURT: All right. Well, Mr. Lynch, I take it  
14 you disagree with their objections?

15 MR. LYNCH: Yes, I do, Your Honor.

16 THE COURT: I'm trying to -- you know, you all are  
17 more familiar with the details of the case and what's relevant  
18 and what's not than I am. And I'm trying to come up with a  
19 way that we can put this in a concrete context.

20 Mr. Lynch, I mean, your letter does make some explanation  
21 of why you feel they're relevant.

22 One thing that had occurred to me is the possibility that  
23 the parties go forward as best they can in trying to address  
24 these issues, and then, Mr. Lynch, when you tell me, or if you  
25 get to a point where absent the agreements, you find yourself

1 at a roadblock, might be easier for me at that point to  
2 understand why exactly you need this information. If it were,  
3 for example, put to me in the context of a dispositive motion,  
4 either that Delaware North is making a dispositive motion or  
5 you are, and one party or the other says, well, the  
6 information that would be directly relevant to this issue is  
7 in the lease agreement or the concession agreement, and here's  
8 why I need it. I mean, there must be some other ways of  
9 getting at least some of this information without going to the  
10 agreements themselves.

11 I note that you point out in your letter that some of the  
12 information referred to in, I guess, Sections 4.01 through  
13 4.04, apparently, according to you, have been published or  
14 discussed elsewhere. It's difficult for me as I sit here to  
15 jump into this and say, well, I think you need this and I  
16 don't think you need this, without maybe having a more  
17 concrete context.

18 And if the parties need, because of this dispute, if the  
19 parties feel they need an adjustment to the deadlines of the  
20 case management order until we can flesh that out, that's  
21 fine. But I just feel a little bit at sea in trying to  
22 determine, you know, exactly which portions might be relevant  
23 and which might not be.

24 Anybody want to comment on that?

25 MR. PRITCHARD: This is Rob Pritchard. I do have a

1 suggestion, and it's the one I discussed with Mr. Lynch last  
2 week and put in an e-mail as well. And that is twofold.  
3 First, a lot of the requests seem to be seeking information  
4 about the entirety of the Camden Yard site, which it was  
5 called in 1992, but now is referred to as the Camden Yards  
6 Sports Complex. If you're not familiar with this part of  
7 Baltimore, it is not just Oriole Park, but it also includes  
8 the Baltimore Ravens football stadium and parking lot and  
9 other things not at issue in the case that aren't served by  
10 the defendant in the concession there. And it would seem that  
11 that level of discovery is seeking information about a much  
12 broader facility or establishment that is being placed at  
13 issue in this case.

14 The defendant contends that it's Sportservice's operation  
15 at Oriole Park that provide the relevant universe for  
16 information, and we're certainly willing to set it in writing,  
17 we'll state in a stipulation, if need be.

18 And because it is defendant's exemption to prove, if we're  
19 wrong, and if the proper establishment under the law is the  
20 entirety of the Camden Yards site, then we won't be able to  
21 meet our burden, because we are taking it upon ourselves to  
22 limit our production of evidence to the operations at Oriole  
23 Park.

24 So I think that might take care of a large percentage of  
25 these requests, which goes towards operations on a much more

1 broad footprint than just the ballpark itself.

2 But secondly, and I think more importantly, at best, the  
3 information sought from this 1992 lease agreement relates to  
4 the terms, and you have the unredacted version, see for  
5 yourself, it goes toward various financial negotiated terms  
6 between the Orioles and the Maryland Stadium Authority which,  
7 at best, provides clues as to how various taxes or rent  
8 payments might be calculated, which goes toward plaintiffs'  
9 argument that the receipts of the Orioles are a relevant  
10 consideration with respect to the application of the  
11 exemption. Of course, defendant disagrees with that  
12 characterization about relevance, but under plaintiffs' theory  
13 of the case, the receipts of the Orioles are relevant. And  
14 that is their theory of the case.

15 But at best, the production of the lease would provide  
16 some clues, and don't provide the actual facts as to the  
17 amount of those receipts. The details of the amount of those  
18 receipts for the relevant period, which begins in 2010, much  
19 after the 1992 lease agreement, will only be obtained in this  
20 case, if at all, via third-party discovery. The defendant  
21 does not possess that information; the Orioles likely do  
22 possess that information.

23 THE COURT: I'm sorry, you say the Orioles what?

24 MR. PRITCHARD: Possess that information. Mr. Lynch,  
25 ultimately his goal is to find out information about the

1 Orioles' receipts, how much money they earned by ticket sales  
2 and advertising and parking and any of the other things that  
3 he mentions in his e-mail, or in his letter. He's not going  
4 to get that information from the lease. He's going to have to  
5 get that information from third-party discovery, which hasn't  
6 been commenced yet. There's been no service of subpoenas, as  
7 far as I know, on the Orioles.

8 And ultimately, so my suggestion is along the lines of  
9 what you were suggesting earlier, that this is going to come  
10 to a head in the discovery process. It won't be something  
11 that needs to wait for dispositive motions. Plaintiff needs  
12 to commence the third-party discovery seeking that  
13 information, and then we can litigate in that setting the  
14 questions of relevance with respect to Oriole's receipts and  
15 that sort of thing, that I'm sure will be zealously litigated  
16 in that context.

17 But to receive calculation -- or formulas from 1992 about  
18 how a rent payment might be calculated based upon a luxury  
19 box, isn't going to provide Mr. Lynch with the information he  
20 ultimately thinks he needs to prove his case.

21 So what I would suggest is that plaintiffs go ahead and  
22 commence the third-party discovery that they're seeking.  
23 We've actually commenced some third-party discovery ourselves,  
24 and are awaiting that information. Plaintiffs should be free  
25 to go ahead and do that. And within that context, we'll have



1 this discussion and it will be appropriately framed.

2 But to look at a paragraph from 1992 about how rent is  
3 going to be calculated based upon a billboard that might be  
4 out in left field, isn't going to teach us anything about what  
5 the receipts of the Orioles were in 2010.

6 And if it does at some point, if Mr. Lynch can make the  
7 case that he now has obtained certain information through  
8 third-party discovery, and now he needs the lease agreement to  
9 help make sense of the numbers, then we can have this  
10 discussion. But at this point it seems entirely premature to  
11 seek that information, in light of the fact that he hasn't  
12 even commenced that third-party discovery.

13 So my suggestion would be, A, that I'm happy to stipulate  
14 with Mr. Lynch that the establishment that we intend to prove  
15 the defense with is Oriole Park, or is the Sportservice  
16 Operations at Oriole Park, and not Camden Yards more broadly;  
17 and B, that he should go ahead and at least commence that  
18 third-party discovery effort, so that we can frame the  
19 relevant question in the more appropriate place.

20 THE COURT: All right. Mr. Lynch, before I hear back  
21 from you, Miss Bruce or Miss Eisenberg, do you want to weigh  
22 in at all?

23 MS. EISENBERG: Your Honor, just to -- I don't want  
24 to repeat what Mr. Pritchard has said, but I think what is the  
25 operating issue here, my lease is an expense. It's our

1 expense. There's not a dime or a dollar of receipt that is in  
2 my lease, obviously, because it fluctuates by year to year.  
3 As you can see by looking at the document, I do not pay a flat  
4 firm every year in rent to the MSA. And even if I did, that's  
5 still not the Orioles' receipts, that's simply on the expense  
6 side of the ledger.

7 So every one of these requests, other than the  
8 geographical identification of the entire Camden Yards site,  
9 has to do with Orioles' expenses, not Orioles' receipts.

10 And again, I don't pretend to understand all of the  
11 nuances of the parties' claims in this case, but the relevant  
12 statute as I have read it, indicates that it's a receipts  
13 test, not an expense test.

14 So the idea -- the other thing I wanted to point out, Your  
15 Honor, as Mr. Pritchard indicates, you can't get back into the  
16 Orioles' receipts by looking at how the rent formula is  
17 constructed. It's an impossibility. The only number that is  
18 capable of being backed into, and you don't need my lease for  
19 this, because it's a statute in the State of Maryland, are  
20 admissions taxes. The admissions taxes are statutorily  
21 defined, and the MSA reports on its annual fiscal annual basis  
22 what its annual admissions taxes received are, and you can  
23 come up with that number. But that's the only number that you  
24 can get, and you don't need that lease for that, because it's  
25 reported by the MSA and it's part of the statute in the

1 Maryland Code.

2 So I wanted to point that out to you, that how we  
3 calculate rent is not relevant to a discussion on what money  
4 is received, and to what avenues that money is received. So  
5 all of these provisions that are being sought, again, other  
6 than the geographical identification of Camden Yard, have to  
7 do with the Orioles' expenses and not receipts.

8 With regard to the geographical rotation, as  
9 Mr. Pritchard, I'm assuming he has the right to frame how his  
10 defense goes forward, but just for everyone's edification, the  
11 Maryland Stadium Authority's annual reports clearly identify  
12 what is the Camden Yard site. And it goes on for pages and  
13 pages identifying what is included in the site, what is done  
14 in that site, how it's operated, all 85 acres of that site  
15 that is owned by the State of Maryland.

16 So to the extent that there's a stated need to understand  
17 what the Camden Yard site is, what it may have been in 1992 is  
18 not what it is as it exists in 2010 or in 2014. The best  
19 place for that is to go to the Maryland Stadium Authority's  
20 annual report, and you can look through it just like anybody  
21 else and identify what is part of the Camden Yard site.

22 So I just wanted to make those two points. Otherwise, you  
23 know, we agree that -- and I'll state this for the record,  
24 Your Honor, Mr. Pritchard's client does not have the Orioles'  
25 receipts numbers. The only numbers that Mr. Pritchard's

1 client has are the revenues that are generated by his client,  
2 the concessionaire. Other than that, the Orioles do not  
3 provide our receipt numbers to our concessionaire.

4 THE COURT: All right. And then I presume that if  
5 Mr. Lynch does commence nonparty discovery and asks for the  
6 Orioles' receipts, you're going to object to it, right?

7 MS. EISENBERG: I would object to the information  
8 depending how the question is phrased. For instance, if  
9 Mr. Lynch asks me what was paid in admissions tax for these  
10 years, there's no reason not to tell him, because it's  
11 reported by the Maryland Stadium Authority. However, if  
12 Mr. Lynch is going to ask for a breakdown of my receipts  
13 across various income-producing mechanisms within Oriole Park  
14 at Camden Yards, then yes, the Orioles will object to any  
15 information that requires us to provide numbers that are not  
16 in the public domain. And by that I mean obviously the  
17 Orioles' rent payment, although not our receipts, are in the  
18 public domain. My receipts, however, other than admissions,  
19 are not in the public domain.

20 THE COURT: But I think the test for the statute, you  
21 know, for a determination whether the exemption applies, I  
22 believe is going to go not so much to the actual amount of any  
23 receipts, but as to the timing of them, and how many months of  
24 the year and so forth. So --

25 MS. EISENBERG: Understood.

1           THE COURT: We may, down the road, be able to fashion  
2 a methodology that protects Mr. Lynch's ability to make that  
3 argument, and Mr. Pritchard's ability to make that argument  
4 without disclosing a specific dollar amount.

5           I don't know; it just seems to me that we need to -- and  
6 without prejudice to the possibility, Mr. Lynch, of you  
7 getting further information on these contracts, it seems to me  
8 that at this point we need to go in the direction of what  
9 Mr. Pritchard says, which is actually making the attempt at  
10 third-party discovery to get what you need to make your  
11 arguments, and then -- on receipts -- and if there's objection  
12 to that, I'll decide it in that concrete context.

13           MR. LYNCH: Your Honor, if I could respond?

14           THE COURT: Yes.

15           MR. LYNCH: It's counterintuitive to me for somebody  
16 challenging relevancy for discovery purposes to suggest the  
17 information is available from a third party. We have a  
18 defendant that has information in its possession that -- and  
19 you can reasonably infer from what we just heard from both the  
20 Orioles and the defendant, in suggesting the information could  
21 be ascertained from other people, they must be conceding the  
22 relevance of it. I mean, I don't see how it's an objection to  
23 relevance to say go get it somewhere else.

24           THE COURT: No, what he's saying, if I understood him  
25 correctly, is that I don't have the information as to the

1 receipts; the Orioles have them. If you want the information  
2 as to receipts, and that's the relevant information, then go  
3 get it from the Orioles, because I don't have it. That's --

4 MR. LYNCH: We intend to do that.

5 THE COURT: I understand, but that's, I think that's  
6 what he's -- that's all I heard him say. Now, he didn't say  
7 it's not relevant, he said I don't have it, and it's not  
8 going to be disclosed by the lease or the concession  
9 agreement. All those set forth are formulas. So if you want  
10 the information as to the actual receipts, you've got to go  
11 get that from the Orioles.

12 MR. PRITCHARD: If I could just clarify my position,  
13 which I think you captured pretty well there, Judge, but we  
14 actually -- we don't agree that the receipts of the Orioles  
15 are relevant, but just to clarify, my position is that, A, the  
16 receipts of the Orioles are not relevant, but B, as it  
17 pertains to this particular dispute about the lease agreement  
18 provision, is that production of the lease agreement  
19 provisions aren't even relevant to proving receipts. So it's  
20 like a second step of lack of relevance.

21 What we suggested, and what I heard you -- and this is  
22 where I think we're on the same page -- is that the plaintiff  
23 needs to commence third-party discovery to seek the actual  
24 ultimate information he thinks he needs. We may have a  
25 relevance -- we anticipate having a relevance discussion in

1 that context. And taking you up on your earlier suggestion  
2 that we need to get the case into the right context before  
3 this discussion could be fully hashed out, our suggestion was  
4 that plaintiff needs to commence that third-party discovery to  
5 seek the actual information he needs, which we don't have,  
6 which the Orioles apparently, I assume, do have, and then we  
7 can have the discussion.

8 But ultimately our position will be that the receipts of  
9 the Orioles are actually not even relevant to the discussion  
10 of the exemption, the applicability of the exemption. But  
11 plaintiffs, their theory of the case is that those receipts  
12 are relevant, and that's why our suggestion is just that we  
13 postpone that discussion until plaintiffs actually serve that  
14 subpoena and we can see what it is they want.

15 MR. LYNCH: Your Honor, could I finish responding?

16 THE COURT: Yes.

17 MR. LYNCH: Your Honor, we are not seeking the actual  
18 information regarding the receipts of the Orioles in  
19 requesting that these redactions be released in the  
20 information provided to us. There are many other variables  
21 involved with the exemption that the defendant is attempting  
22 to assert here, and our prospective challenge of that  
23 exemption. And these two documents are integral to that  
24 challenge that we intend to make. It is not just based upon  
25 the information financially from the Orioles and what their

1 actual receipts are. That is not indicated in these  
2 documents. We will seek that information from a third-party  
3 source, just like the Orioles. But that's not what's at issue  
4 here. The redactions that we're challenging right now pertain  
5 to many other factors of this exemption. I think it's  
6 unavoidable, Your Honor, that we have to go through the  
7 exemption and start to discuss what it is the information that  
8 we're seeking, and how it does tie into the exemption that  
9 they're going to assert.

10 Mr. Pritchard said, well, we think the relevant  
11 establishment for this exemption is just their operations at  
12 the Oriole Park. Just so -- I think Rob explained this, but  
13 let me just make sure we all understand it, because I don't  
14 think we are all that familiar with where the Orioles play and  
15 where the Ravens play. There are two stadiums there. They  
16 refer to the entire complex there as Camden Yard. They refer  
17 to the stadium or the ballpark where the Orioles play as  
18 Oriole Park. To determine whether or not the exemption  
19 applies for the defendant here, we first have to establish --  
20 or determine what the establishment is, it's going to be  
21 deemed to be the amusement or recreational establishment.  
22 That's their affirmative defense. There's no question that  
23 they're the ones that are initially going to take a position  
24 on what that establishment is. But once they take that  
25 position, it's our prerogative and our right in this lawsuit



1 to challenge whether that's the appropriate establishment or  
2 not, before we even get into applying secondary -- the two  
3 tests, whether it's seven months or more in terms of the  
4 receipts and whether they're weighed inappropriately for the  
5 exemption to apply. You first have to define the  
6 establishment.

7 No question that the defendant is going to be the first  
8 entity to take a position on that. Once they do though, we're  
9 going to challenge that most likely. Because they're going to  
10 take a position that defines the establishment in a way that  
11 helps their case. Our job, obviously, in representing our  
12 clients, is to challenge that analysis in a way that helps our  
13 position and our case.

14 To say, as Mr. Pritchard did, that we don't think it's the  
15 entire Camden Yards facility, and if it is the Camden Yards  
16 facility, then we don't think the exemption will work, that  
17 does not concede away our ability to get this information.  
18 Because we have to prove that if. The if that he is throwing  
19 out there is an if that I have to prove in my case. The  
20 information that he's trying to avoid providing by throwing  
21 that concession out there, doesn't work. I mean, I'm not  
22 going to be able to prove this, if I don't have this  
23 information. So it doesn't do any good to say, well, if it's  
24 Camden Yards, then the exemption clearly doesn't apply. We  
25 think it's the Oriole Park. But if it's Camden Yards, the

1 exemption doesn't apply. That's what their position is.

2 I can't prove the if until I get this information. That's  
3 not fair for them to say, well, if that's what it is, we'll  
4 concede the exemption doesn't apply. Because they know we're  
5 never going to be able to prove that without getting what  
6 these lease agreements say about how the facility is defined,  
7 and who does what in different geographic locations of the  
8 facilities. That's what's at issue here.

9 THE COURT: It seems to me, Mr. --

10 MR. LYNCH: This information, to be candid, Your  
11 Honor, this information couldn't be more relevant to this  
12 lawsuit. These are the essential terms of the relationships  
13 between the three parties that are involved in this facility,  
14 the Orioles, the Maryland Stadium Authority and the defendant  
15 here. These are the documents that dictate how the facility  
16 is laid out, what the operations are and who does what. These  
17 are the documents I have to look to when I have to determine  
18 whether the exemption applies.

19 THE COURT: Counsel, Mr. --

20 MR. LYNCH: It couldn't be more relevant.

21 THE COURT: Mr. Lynch, okay, I hear what you're  
22 saying. I do have another matter coming on at 11:30. Let me  
23 just say this. I see what you're saying, I see what both  
24 sides are saying. It seems to me that conceptually that if  
25 there is information, it's going to be Mr. Pritchard's burden

1 on asserting this defense. And, Mr. Lynch, if there is  
2 information that you can show me that you legitimately need to  
3 challenge that defense, and that information is not able to be  
4 produced, because Mr. Pritchard's client has bound themselves  
5 to confidentiality, or it's otherwise confidential, then I  
6 think Mr. Pritchard is going to lose on that defense. If, on  
7 the other hand, it can be produced or it can be produced under  
8 some terms that are acceptable to everybody, then he may  
9 prevail, or he may lose for other reasons. But that, I guess,  
10 is the way I see things eventually shaking out.

11 Now, maybe that's too simplistic, but I agree with you,  
12 Mr. Lynch, that you can't be deprived of information that you  
13 need to challenge -- that you legitimately need to challenge  
14 the defense. But at this point I still have difficulty seeing  
15 how all this may be relevant. It may well be, but I think  
16 what I need to see is things put in a more concrete context.

17 So I'm leaning toward, and I'm going to take another look  
18 at it, but I'm leaning toward at this point denying your  
19 motion to compel, without prejudice to renewal down the road  
20 when things have firmed themselves up a little bit. I would  
21 suggest that in the interim you, you know, you go forward and  
22 start making your third-party requests for other information.  
23 I presume we're going to have other objections, and then we'll  
24 see where we go from there. All right? I'm going to hold the  
25 deadlines of the case management order in abeyance. And I'll

1 get out some brief decision in this regard. But that's the  
2 way I see things progressing at this point. Okay? So nobody  
3 wins, nobody loses as of today, but I'm just suggesting that  
4 we let things percolate a little more. All right?

5 MS. EISENBERG: Thank you, Judge.

6 THE COURT: Thank you.

7

8 (Court adjourned at 11:32 a.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the electronically recorded above proceedings, to the best of my ability.

S/Debra L. Potocki  
\_\_\_\_\_  
Debra L. Potocki, RMR, RDR, CRR